IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5528 OF 1988

Shri Sambhajirao Hanumantrao Sawant-Bhosale (since deceased) by heirs :-

1A. Shri Rajit @ Shivajirao Sambhajirao Sawant-Bhosale, Age-Adult.

1B. Shri Indrajit Sambhajirao Sawant-Bhosale
Both residents of Hire, At & Post: Hire, Tal:Chandgad, District : Kolhapur .. Petitioners

Versus

Narsu Babaji Patil (since deceased) by heirs:-

1. Shri Sakharam Narsu Patil
(Since deceased) by heirs:-
1A.Smt. Sakuntala Sakharam Patil
1B.Shri Mohan Sakharam Patil
1C.Shri Umesh Sakharam Patil
1D.Shri Dinkar Sakharam Patil
1E.Smt. Sarutai Sakharam Patil
All 1A to 1E having address
at Room No.1241, Kotwal Galli,
Belgaum 590 002.
2. Shri Ramchandra Narsu Patil
r/o Tambulwadi, Post: Date,
Tal: Chandgad, Dist. Kolhapur.
3. Shri Balwant Narsu Patil
r/o Behebhat, Post Date.
4. Shri Narayan Narsu Patil
r/o Belebhat, Post: Date.
5. Smt. Anusaya B. Salgudi
r/o Vithalapur, Karapur,
Post: Sarawal Dicholi, Goa. ..Respondents

Mr. R.G. Ketkar for Petitioners.
Mr. Vishwanath Talkute for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 06, 2006.

ORAL JUDGMENT.:

1. The petitioner is the original landlord of the agricultural land located in Survey Nos.15 and 16 of village Kurutanwadi, Taluka Chandgad, District Kolhapur. The land in Survey No.15 admeasures 13 Acres and 37 Gunthas, whereas the land in Survey No.16 admeasures 20 Acres and 15 Gunthas. The land was Saranjam Inam Jahagir and on abolition of Inam, the land came to be resumed by the Government and was re-granted to the landlord on new and permanent tenure by an order dated 8/8/1968.

2. It appears that sometimes in early 1969 proceedings under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the Act) were commenced by the Agricultural Lands Tribunal at Chandgad and the statement of the tenant Shri Narsu Babaji Patil was recorded on 28/5/1969 and the statement of Mr. Ramrao Anantrao Kulkarni was

recorded on 14/6/1976. However, before the statement of Mr. Kulkarni was recorded, the ALT passed an order on 4/10/1969 and fixed purchase price to be paid by the tenant i.e. the present original respondent Shri Narsu Babaji Patil. The landlord, therefore, filed an appeal before the Special Deputy Collector, which was registered as Tenancy Appeal No.183 of 1970 contending that the lands in Survey Nos.15 and 16 were given on lease for the the cultivation of sugarcane and, therefore, in view of the provisions of Section 43-A of the Act, the proceedings under Section 32-G of the Act were not maintainable. It appears that the same contentions were also advanced originally by the landlord before the ALT while opposing the proceedings under Section 32-G. However, these contentions were turned down by the Special Deputy Collector and Tenancy Appeal No.183 of 1970 was dismissed. Consequently, Tenancy Revision Application No.257 of 1971 was filed before the Maharashtra Revenue Tribunal, Kolhapur and the Revision Application was allowed by remanding the inquiry to the ALT.

3. On remand, the ALT conducted fresh inquiry and by the order dated 29/7/1976 held that the landlord

failed to prove that the suit land was given on lease for growing sugarcane crop. Consequently, the earlier order dated 4/10/1969 came to be confirmed. This second order dated 29/7/1976 passed by the ALT came to be challenged before the SDO, Gadhinglaj Division, Gadhinglaj in Tenancy Appeal No.15 of 1976 and the same was dismissed on 30/6/1977. Revision Application No.371 of 1977 filed before the M.R.T. was also dismissed on 23/1/1979 and, therefore, the landlord approached this court in Writ Petition No.456 of 1980. The said writ petition was partly allowed and the order of the M.R.T. was set aside by remanding the case to the same Tribunal to hear the parties afresh and decide the rights of the respective parties. The parties were granted liberty to file additional papers or documents, if they so desired, as per the decision of this court dated 21/12/1983. On remand, the M.R.T. decided the Revision Application afresh after hearing all the parties concerned and by the impugned Judgment and Order dated 11/2/1988 the Revision Application No.371 of 1977 came to be dismissed for the second time.

4. Admittedly, this petition is only in respect

of the land located in Survey No.15, admeasuring 13 Acres and 37 Gunthas and it does not concern the remaining land in Survey No.16, admeasuring 20 Acres and 15 Gunthas. When the revision was remanded by this court by allowing partly Writ Petition No.456 of 1980, the petitioner-landlord filed a copy of the lease agreement entered between his late father Shri Hunmantrao Dattajirao Sawant-Bhosale and Professor Ramrao Anantrao Kulkarni. This agreement was dated 30/9/1943 and it was for a period of 40 years. Resultantly, it was to expire on 1/1/1984. The landlord contended before the M.R.T. in the second round on remand that as per the said lease agreement the land was given to Mr. Kulkarni on lease for cultivation of sugarcane and Mr. Kulkarni had, in turn, inducted the present respondent as the tenant of the suit land by an oral agreement. The relevant term of the agreement, which is in Marathi, has been reproduced by the M.R.T. in the impugned Judgment. The true official translation of the same reads as under:-

> " An agreement has been made between both of us that there is no hindrance (obstruction) to cultivate any crop or to yield ‘bagayat’

(fruit, vegetables) crop by taking river water installing engine or by using water wheel, by the number 2 of us."

. There can be no doubt that said term of the agreement does not specifically say that the suit land was given to Mr. Kulkarni for cultivation of sugarcane. The said clause can be read in two parts, namely, (i) the tenant was at liberty to take out any crop and (ii) there was no objection if he wanted to lift water from the additional river and irrigate the land so as to cultivate Bagayat crops. Section 90(6) of the Maharashtra Land Revenue Code, 1966 defines the types of land under irrigation and bagayat. For irrigation land has been classified in the following three categories:-

(a) that watered by Govt. Canals notified by Govt. first class irrigation works.

(b) that irrigated by water lifted by 'mots' from wells.

(c) that watered by 'pat' water from bandhars constructed in the beds or rivers or nalas at private or Government costs.

As per the landlord the lease agreement clearly indicate that the land was in the third category i.e.

lift irrigation from the river water.

5. In the absence of a specific term that the land was leased out for cultivation of sugarcane, it would be necessary to examine the evidence as to whether the tenant, originally Mr. Kulkarni and subsequently present respondent, was cultivating the land and sugarcane crop was cultivated. No doubt, in the evidence produced by the respondent in terms of the 7 x 12 extract, the M.R.T. in its very first decision dated 10/1/1973 had recorded a finding that sugarcane crop was cultivated in four agricultural years as under :-

Year	Area of Land
1954-55	2 Acres 7 Gunthas
1955-56	2 Acres 37 Gunthas
1956-57	3 Acres 22 Gunthas
1957-58	3 Acres 22 Gunthas

There was no further evidence about cultivation of sugarcane from the year 1958-59 onwards placed on record by way of documents like 7 x 12 extract etc. in respect of land in Survey No.15. We will have to, therefore, by following the law laid down by this court in the case of Vinayak Gopal Limaye vs. Laxman

Kashinath Athavale **(AIR 1957 Bombay 94)** and in the case of Usaf Usman Mujawar vs. Shrimant Yeshwantrao Appasaheb Ghatage **(1964 Mh.L.J. 190)**, examine the evidence placed before ALT before remand as well as after remand and as noted earlier the evidence of Mr.Kulkarni was recorded after remand on 14/6/1976 when he was not cultivating the suit land. In fact, it is not disputed that right from the year 1952 onwards said Mr. Kulkarni was not cultivating the suit land and, therefore, his evidence is of no consequence at all in deciding the main issue as to whether the suit land was given on lease for cultivation of sugarcane or in fact sugarcane was cultivated on the same land by the respondent. We will have to, therefore, examine the evidence of the respondent. He deposed before the ALT on 28/5/1969 and he was cross-examined at length. So far as the cultivation of sugarcane is concerned, he stated in the examination-in-chief, which is in Marathi, and the true official translation of the same reads as under:-

> ".....The entire area of S.No.16 and 15 is not useful for cultivation. Recently sugarcane is cultivated in the area of approximately 5 to 6 acres. The area under sugarcane can not be

> extended than this because since around the month of March river water does not get available and therefore area of sugarcane can not be extended. Sugarcane crop costs rupees 2000/- per acre.

. In his cross-examination he stated, which is in Marathi and the true official translation of the same reads as under:-

> "....In the current year, approximately 1/2 acre sugarcane is cultivated in S.No.15. Paddy Crop can not be taken in S.No.15. There will be approximately 5/6 acres of sugarcane in 20 acres from S.No.16. Paddy Crop is taken in S.No.16.....
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> ..... It is not true to say that sugarcane is cultivated in half-half area in S.No.15 and S.No.16. Last Year 5/6 acres of sugarcane was cultivated. For last 4 years 5/6 acres of sugarcane is being cultivated in the land....."

6. It must be appreciated that the respondent was deposing regarding the cultivation in the total land i.e. Survey Nos.15 and 16 and as per him the maximum acreage under the sugarcane cultivation never exceeded 5 to 6 acres. In the year 1969 when his evidence was recorded by the ALT, in Survey No.15 only 1/2 acre land was under the cultivation of sugarcane.

7. Mr. Ketkar, the learned counsel for the petitioner-landlord by referring to the judgment of this court in the case of Mujawar (Supra) submitted that the quantum of acreage is immaterial to bring the suit land within the purview of Section 43-A of the Act and these contentions are unsustainable. The Division Bench of this Court in the Mujawar's case observed, inter alia, as under:-

> "..... It is indeed true that on the language of clause (b), it has to be established that the lease granted was for cultivation of sugarcane or for growing fruits and flowers etc. But it nowhere specifically mentions that the purpose of lease must be specifically mentioned either in the instrument of lease or that the lease must be for cultivation of sugarcane etc. in the entire field. On the other hand, in our opinion, what is required to be established on material evidence is whether there was a lease; and whether the lease was for cultivation of sugarcane or growing of fruits or flowers. In each case, it would depend on the evidence, whether the lease has been for cultivation of sugarcane or growing of fruits or flowers etc. We are informed that the cultivation of sugarcane can never be in the entire field, but cultivation of sugarcane is always carried on by rotation in parts of the field. It would, therefore, depend on the facts of each case, and it would be for the Courts of fact to reach a conclusion on the evidence available to it whether the lease has been for cultivation of any particular crop or not. Nothing would

turn on whether the agreement was to grow that crop in the entire field or not....."

8. In the instant case, all the courts of fact have recorded a finding on the basis of the evidence available on record that the landlord failed to prove that the suit land was leased for cultivation of sugarcane or in the alternative sugarcane was, in fact, cultivated in the land. It would be important to refer to the depositions of the respondent recorded by the ALT that from the total land in Survey Nos.15 and 16 six acres land was uncultivable because four acres land had gone in the river scheme and two acres had submerged. He further stated that the entire land in both the survey numbers was not fit for cultivation or for that matter sugarcane cultivation. He admitted that about 5 to 6 acres of land was under the cultivation of sugarcane and there was no scope to increase the same acreage for the simple reason that the river water would not be available from the month of March onwards. As noted earlier, in the year 1968-69 only about 1/2 acre land was under cultivation from the suit land in Survey No.15. The onus to prove that the entire land or a major portion of it which

could be cultivated from Survey No.15 was, in fact, under cultivation of sugarcane fell on the landlord and there was no evidence to support the landlord's contentions. The courts below, therefore, accepted the evidence of the respondent-tenant and recorded a finding that the landlord failed to prove that the suit land was leased for cultivation of sugarcane. Consequently, the suit land would not come within the ambit of Section 43-A of the Act. The challenge to the impugned judgment and order of the M.R.T. is thus unsustainable and the petition must fail, as the cultivation of sugarcane in half an acre or one to two acres out of total area of about 14 acres of the suit land would not prove that it was given on lease for sugarcane cultivation.

9. In the result, the petition is dismissed.

Rule discharged but without any order as to costs.

(B.H. Marlapalle,J.)